

OGC HAS REVIEWED. *OSM*

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OGC 76-3060
7 June 1976

MEMORANDUM FOR: Chairman, Security Committee

SUBJECT : Proposed DCID No. 1/19 "Nondisclosure Agreements for Intelligence Sources or Methods Information"

REFERENCE : Memo for NFIB from Ex. Sec. (NFIB-D-5.1/57)
dated 27 May 1976, same subject

1. Reference transmits a copy of the subject proposal requesting NFIB members to record their concurrence in or comments on the subject by 9 June 1976. Listed below are several legal considerations which should be taken into account prior to the DCID being sent to the Director.

a. As a matter of precision and to avoid any ambiguity the following language should be used "intelligence sources and methods" not "sources or methods of intelligence" as in paragraphs 1, 2, 3, 4c, 4e, and 4f of the proposed directive. Such substituted language is consistent with that in 50 U.S.C. 403(d)(3) and 50 U.S.C. 403g.

b. In order that the marking of information to be protected by the proposed DCID not be confused with that information currently being protected by the classification system (Executive Order 11652, as amended), the marking proposed in paragraph 3 of the proposed DCID should be different from that associated with the classification system. I note that the National Security Council Directive of May 17, 1972 Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information uses the notice "WARNING NOTICE - SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED" for classified information or material relating to sensitive intelligence sources and methods. 3A CFR, 1972 COMP, p. 227. A different notice such as "WARNING - THIS DOCUMENT CONTAINS INTELLIGENCE SOURCES AND METHODS PROTECTED FROM UNAUTHORIZED DISCLOSURE PURSUANT TO 50 U.S.C. 403" or "WARNING - INTELLIGENCE SOURCES AND

METHODS PROTECTED BY 50 U.S.C. 403 CONTAINED HEREIN" seems appropriate. Of particular importance is that such notice should not be limited by a term such as "SENSITIVE." Such a term could add to the burdens of proof that a court could impose on the Government in any case that may involve materials with such markings. Establishment of such a new warning notice will require a new abbreviation for "WN INTEL." Such might be "WISM." Thus, the next to last sentence in paragraph 3 relating to DCID No. 1/7 of the proposed DCID should be revised. Possibly it should simply state that "for special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated 'WISM'." I recognize that at least temporarily this may add an additional marking to many documents which are otherwise classified, however, this Office believes it important from a legal point of view that the two warning notices be cast in different language. It seems appropriate to consider the elimination of the WARNING NOTICE that is required by the classification system. A suggestion for such will be made to the NSCM 229 Group.

c. Grammatically, "revealing" may be more accurate than "containing" in paragraph 1.

2. If there are questions to any of the above, please do not hesitate to call.

Assistant General Counsel
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STAT cc: [redacted]

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Chief, General Law Division